



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 20, 1995

Mr. C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission
101 East 15th Street
Austin, Texas 78778-0001

OR95-186

Dear Mr. Davis:

You ask that this office reconsider its determination in Open Records Letter Nos. 95-141 (1995) and 94-530 (1994). In those rulings, we concluded that the Texas Employment Commission (the "commission") had not met its burden under section 552.103 of the Government Code to establish that the requested information related to pending or reasonably anticipated litigation. We also concluded that the requested information was not excepted by sections 552.111 and 552.108 of the Government Code.

The requestor has supplemented his original request to "include copies of any correspondence from [the commission] to the Attorney General, Sweetwater Police Department, and any other state agency." You explain that you have provided to the requestor copies of commission correspondence relating to the original requests for rulings to this office. You have submitted for our review two additional documents that you contend are responsive to the second request for information. You claim that sections 552.103 and 552.108 except all of the responsive records from required public disclosure.

You claim that section 552.103 of the Government Code excepts the requested information from required public disclosure. Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5.

Since we issued our previous ruling, we have been advised that commission employees have successfully sought a temporary injunction against the requestor. You have provided us with a copy of the filed petition, which alleged that the requestor "has engaged in a course of conduct designed to harass, intimidate and threaten" the employees and "cause them to be in fear of imminent harm and bodily injury." You have also provided us with a copy of the court's order, granting the temporary injunction. We note that the court has ordered the requestor to refrain from, among other things, "communicating with [the commission employees] in a threatening or harassing manner[,] . . . following any of [the employees] to or from their place of business or their place of residence or to or from any location within the city[, and] . . . from going on, to, or within 100 yards" of their residence or place of employment. You explain that the "injunction is temporary until such time as a hearing on a permanent injunction is conducted." Finally, you state that the requestor has violated the terms of the injunction "necessitating the filing of further criminal complaints by [the] Sweetwater staff."

Based on the new information that you have provided to this office regarding these recent developments, we conclude that the commission has established that litigation is pending for purposes of section 552.103. In addition, we have reviewed the documents submitted for our review and conclude that they relate to the aforementioned litigation. For these reasons, we conclude that the commission may withhold the requested information under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

*Open Government Section
of the Opinion Committee*

Open Government Section

Enclosures: Submitted documents

cc: Mr. Ronald R. Green
601 Canfil St.
Sweetwater, Texas 79556
(w/o enclosures)